KUNASEGARAN MANICKAM

v.

BAULA SINGH KIPA SINGH & ANOR. & ANOTHER CASE

HIGH COURT MALAYA, SEREMBAN
ABDUL RAZAK J
[CIVIL SUIT NO. 13 AND 14 OF 1976]
22 JUNE 1981

TORT: *Damages - Negligence - Apportionment of blame - Duty of plaintiff to establish case.*

The learned Judge apportioned liability equally between the plaintiff and the defendants and made an order that the defendants pay the plaintiffs the damages to the extent of 50% of the quantum agreed upon.

Two actions, Civil Suit No. 13 of 1976 where the plaintiff was the rider of the motorcycle, the subject matter of the accident and Civil Suit No. 14 of 1976 where the plaintiff was the pillion rider, were consolidated. The parties were agreed on the quantum for general and special damages at RM35,000 in Civil Suit No. 13 of 1976 and at RM75,000 in Civil Suit No. 14 of 1976. They were agreed on costs and interest from the date of the judgment.

The accident, the subject matter of the claim, took place when the plaintiff collided with the motor lorry driven by the first defendant, coming from the opposite direction. The plaintiff was negotiating a bend at the relevant time. He claimed that on seeing the lorry he swerved to his side of the road and that the lorry encroached into his path. He was travelling at 15 to 25 miles per hour then. The motorcycle collided with the middle of the lorry, at which time of collision the plaintiff claimed he was about 2 feet from the edge of the road.

Held:

[1] Viewing the situation as a whole, the sketch plan and the plaintiff's own evidence were sufficient to rebut the plaintiff's claim that the first defendant was entirely to blame. He found the plaintiff's story improbable, if not impossible. Both the plaintiff and the first defendant had kept more to the centre of the road than they should have. The situation was aggravated by the plaintiff's unfamiliarity with the motorcycle, which did not belong to him. The plaintiff was only a provisional driver, unfamiliar with busy public roads. He was carrying a pillion rider and was going downhill. These factors could have affected judgment and his ability to control the motorcycle.

[2] The fact that the defendants had not been called to rebut the plaintiff's case did not mean judgment must be entered in favour of the plaintiff. The question of tilting the balance of probabilities in the plaintiff's favour would only arise where the plaintiff has proved his case.

For the plaintiff in C.S. No. 13 of 1976 - V. Balasingam
For the plaintiffs in C.S. No. 14 of 1976 - K. Gunaretnam
For the defendants in both Suits - Wong Soon Foh

(Digest Form Only)

Also found at [1982] CLJ 86